



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

August 31, 2011

WA State Dept. of Transportation
c/o Jason W. Smith, SCR Environmental Mgr.
PO Box 12560
Yakima, WA 98909-2560

RE: Temporary Authorization No. G4-35261 for: reestablishing vegetation.

Dear Mr. Smith:

Background

On October 15, 2009, Washington State Department of Transportation (WSDOT), in Yakima, WA applied to the Department of Ecology (Ecology) seeking approval for Temporary Authorization to appropriate water for re-establish vegetation of grasses and trees due to road construction at an instantaneous rate (Qi) of 65 gallons per minute (gpm) up to 0.92 acre-feet per year. This water uses is scheduled to begin after September 1, 2011 and be completed November 30, 2013.

The water will be withdrawn from an existing well within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T. 12 N., R. 19 E.W.M Yakima County. The well has a 6" casing and is completed to a depth of 100 feet with a static water level of 8 feet. The place of use for this project is that portion of Government Lot 3 lying East of the highway right-of-way being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T. 12 N., R. 19 E.W.M. being within Yakima County, Washington.

Public Interest

A public notice of the application was published in the Yakima Herald-Republic on April 22, 2011 and April 29, 2011. No letters of protest or comments were received during the 30-day protest period.

The WDOT project is to relieve traffic congestion and will decrease the safety hazards at the I-82 Valley Mall Boulevard intersection at Union Gap, Washington. A water right is requested to establish vegetation along the disturbed roadside.

Proposed Use

The proposed withdrawal of 65 gpm up to 0.92 acre-feet per year for the purpose of irrigating 3.56 is a beneficial use.

Availability and Impairment

The WSDOT has placed Yakima Adjudicated Court Claim No. 00366 in the upper Yakima River Basin into the State Trust Water Program. This trust water is to mitigation for the water use for projects within the Yakima River Basin. The period of use for this Court Claim is April 1 through October 31. A portion of this mitigation water is proposed to be used for the water needs of this project and to mitigate any impacts to the Yakima River flows. The WSDOT is also in the process of acquiring a water right from Rattle Snake Creek a tributary to the Naches River for mitigation. In the event that WSDOT determines that a different water right will be used to mitigate the water use for this project they will need prior approval from Ecology.

Conclusions and Decision

The water proposed and as mitigated for this short term use is available for the proposed project, a beneficial use, can take place on a short term basis without impairing existing water rights and is not contrary to the public's interest.

Provisions

This Temporary Authorization has the following conditions:

1. The priority date for this short term authorization is October 15, 2009.
2. If the applicant fails to comply with the terms of this Temporary Authorization, it may be revoked.
3. The issuance of this Temporary Authorization in no way guarantees a standard Permit will be issued.
4. Water withdrawal may take place from April 1 through October 31 each year starting September 1, 2011
5. This short term authorization shall expire on **November 31, 2013**.
6. The withdrawal will be from an existing well located within the NE¹/₄NW¹/₄ of Section 5, T. 12 N., R. 19 E.W.M Yakima County.
7. This short term authorization relies on mitigation from Court Claim No. 00366 for 0.11 acre-feet of consumptive use offset from September 1, 2011 through October 31, 2011. WSDOT may replace Court Claim No. 00366 as the source of mitigation for the 2012 and 2013 irrigation season by providing Ecology with notice by March 1, 2012 and upon Ecology's approval of the replacement trust water right.
8. All water used shall be mitigated for to insure water budget neutrality in the Yakima River by Yakima Adjudicated Court Claim No. 00366 unless another water source is approved by Ecology.

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9. The water will be used for re-establishing vegetation of grasses and trees along the disturber roadside. The purpose of use irrigating 3.56 acres.
10. The place of use for this project is that portion of Government Lot 3 lying East of the highway right of way being within the NE¼ NW¼ of section 5, T. 12 N., R. 19 E.W.M. being within Yakima County, Washington.
11. Withdrawal shall not exceed 65 gpm and is not to exceed 0.92 acre-feet per year during the permitted period.
12. The operator of the system under this authorization shall:
 - a. Have a copy of the Temporary Authorization.
 - b. Be aware of the parameters and provisions and operate accordingly.
 - c. Provide said copy as evidence of this Temporary Authorization upon request by Department of Ecology staff.
13. Water use data shall be recorded by tracking the number of water tank truck loads and truck capacity, amount of water used to mix concrete and shall be submitted to Department of Ecology, Central Region Office, Water Resources Program by January 31, 2014.
14. At a minimum, the following information shall be included with the submitted water use data: owner, contact name if different, mailing address, daytime phone number, WRIA 37, Temporary Permit No. G4-35261, water volume used including units of measurement. In the future, Ecology may require additional parameters to be reported or more frequent reporting.
15. Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times to the records of water use that are kept to meet the above conditions, but only to the extent otherwise allowed by law.
16. This Temporary Authorization shall in no way excuse the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
17. The issuance of this Temporary Authorization does not convey a right of access to or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between the applicant and owner of that land.
18. The water sources and/or water transmission facilities may not be located entirely upon the land owned by the applicant. Therefore, the applicant is advised that issuance of a Permit by Ecology for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess.

YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this decision. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this decision:

- File your appeal and a copy of this decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
Pollution Control Hearings Board 1111 Israel Rd SW Ste 301 Tumwater WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903

Please send a copy of your appeal to:

Melissa Downes
Department of Ecology
Central Regional Office
15 W Yakima Ave., Ste 200
Yakima WA 98902-3452

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

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Sincerely,

A handwritten signature in black ink, appearing to read 'RFB', with a long horizontal flourish extending to the right.

Robert F. Barwin
Acting Section Manager
Water Resources Program/CRO

RFB:EH:gh
110860

Enclosures: *Water Measuring Requirements (Form 1)*
Your Right To Be Heard

By certified mail: 7007 2560 0001 9535 6893

Cc: Philip Rigdon, Yakama Nation 110860